



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

APPLICATION OF:)
 GARLAND FRUITT,)
 HANNAH ROYCE,)
 NICOLE MCAFEE,)
 JESS EDDY,)
 TAMYA COX-TOURE,)
)
 CITIZEN RESIDENTS OF THE)
 COUNTY OF OKLAHOMA, STATE)
 OF OKLAHOMA, PETITIONING FOR)
 AN ORDER DIRECTING A GRAND)
 JURY TO BE CONVENED)
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FILED IN DISTRICT COURT
OKLAHOMA COUNTY

OCT 19 2021

RICK WARREN
COURT CLERK
66 *MC*

CASE NO. GJ-2021-2

OPINION AND ORDERS

A. Procedural History.

1. The Petition to Impanel Grand Jury (the "Petition") was filed on October 6th, 2021.
2. The Petition was presented to Presiding Judge Ray Elliott on October 13th, 2021, by delivering a copy to Judge Elliott's Chambers.
3. Rule 10 D. of the Rules of the Seventh and Twenty-Sixth Administrative Districts (Oklahoma and Canadian Counties) requires that "Copies of all motions and briefs shall be hand delivered or mailed to the office of the assigned judge, or faxed, with permission of the assigned judge..." While the Petition is not a motion or brief as recited in the last sentence of Rule 10 D., the first sentence of Rule 10 D. states "Parties or attorneys filing motions, pleadings, orders or journal entries after the petition has been

filed shall serve copies by hand delivery, by mail or by facsimile transmission". A "petition" is defined as a "pleading" in the Code of Civil Procedure at Okla. Stat. tit. 12 § 2007 A. The purpose of delivering a copy of matters for consideration to the assigned judge is so that the assigned judge is aware of matters in need of attention. There is no procedure in a county as large as Oklahoma County where matters filed with the court clerk are brought from the court clerk's office to the judge's chambers. Such a process is not feasible or logistically possible given the high volume of petitions, motions, briefs and other papers filed daily in Oklahoma County. Responsibility for bringing matters to the assigned judge's attention rests solely on the parties or attorneys seeking relief from the assigned judge.

4. Pursuant to Okla. Stat. tit. 38 § 102, the assigned judge to determine the sufficiency of a petition calling for the impaneling of a grand jury is the presiding administrative judge. The Presiding Administrative Judge of the Seventh and Twenty-Sixth Judicial Districts is The Honorable Ray Elliott.
5. Judge Elliott's wife serves as an Assistant District Attorney for Oklahoma County and is mentioned in the Petition as an agent of Oklahoma County District Attorney David Prater ("D.A. Prater"). The Petition seeks the removal from office and indictment of D.A. Prater.
6. Judge Elliott promptly and properly recused from this matter.
7. On October 14th, 2021, this matter was assigned to this Court and the below signed District Judge.
8. Based on Okla. Stat. tit. 38 § 102, this Court had four days from the date the Petition was presented to Judge Elliott, excluding weekends, or until October 19th, 2021, in which to determine the sufficiency of the Petition.

B. Substantive Analysis of the Petition and FINDINGS.

1. All acts of D.A. Prater set forth in the Petition were acts alleged to have been done "through the powers of the office of district attorney and under color of law". See paragraph 2 of the "Factual Allegations" of the Petition.
2. This Court has reviewed all the factual allegations set forth in the Petition and determined that all the allegations against D.A. Prater were based on and within his capacity as a prosecutor and as the duly elected District Attorney of Oklahoma County. All the actions alleged in the Petition were inherent to the prosecutorial functions of the office of District Attorney for Oklahoma County.

3. Okla. Stat. tit. 51 § 155 as well as the published opinion from the Oklahoma Court of Civil Appeals in *Eddie Dean White v. State of Oklahoma, ex rel. Tim Harris in his official capacity as Tulsa County District Attorney, et. al.* 2005 OK CIV APP 79, 122 P.3rd 484 (2005) holds that "prosecutorial functions" are subject to sovereign immunity. The trial court in *White v. Harris* sustained a Motion to Dismiss the petition against D.A. Harris, and the Court of Civil Appeals affirmed the trial court's decision. Certiorari by the Oklahoma Supreme Court was later denied on October 3, 2005. In *White v. Harris*, the Petitioner alleged the District Attorney's actions resulted in false imprisonment, negligence, and a violation of civil rights. The trial court held that "the actions alleged by Appellant are inherent to the District Attorney's prosecutorial function and, as a result, District Attorney is immune from liability for those acts pursuant to 51 O.S. 2001 § 155(2)." *White v. Harris* @ paragraph 8.
4. The Court in *White v. Harris* further held that the "undisputed facts in the record show that the District Attorney's actions were immune from liability pursuant to the GTCA. The Act provides that the State of Oklahoma has adopted sovereign immunity and that its employees acting within the scope of their employment are immune from liability of torts. 51. O.S. 2001 § 152.1 (A)...Section 155(2) of the Act provides that the State or a political subdivision shall not be liable for losses resulting from judicial, quasi-judicial, or prosecutorial functions." *White v. Harris* @ paragraph 11.
5. The statute cited by Petitioners in the Petition to remove D.A. Prater, Okla. Stat. tit. 22 § 1181, is not applicable to D.A. Prater. The plain language of the statute states: "Any officer **not** subject to impeachment elected or appointed...may, in the manner provided in this article, be removed from office..." (Emphasis added). D.A. Prater is duly elected and subject to the will of the people at the next election or the legislative process for impeachment. The statute cited by Petitioners in the Petition provides a remedy for removal of an office holder **not** subject to the will of the people at the next election and **not** subject to the legislative process of impeachment.

C. ORDERS.

1. The Petition on its face does not contain reasonably specific identification of areas to be inquired into or sufficient general allegations to warrant a finding that such an inquiry may lead to information which, if true, would warrant a true bill of indictment or action for removal.

2. This Court hereby **QUASHES** the Petition for the following deficiencies:
- a. All alleged actions by D.A. Prater in the Petition, even if taken as true, are actions inherent to D.A. Prater's prosecutorial functions and therefore subject to sovereign immunity as well as the prerequisites of the Oklahoma Governmental Tort Claims Act.
 - b. The authority cited by the Petitioners in the Petition to remove D.A. Prater does not apply to him as D.A. Prater is an elected official.
 - c. The Federal authority cited in the Petition, "18 U.S.C. § 241", "18 U.S.C. § 242", and "18 U.S.C. § 245", and the allegations referenced in the sections of Petition related to the Federal authority, even if taken as true, are not jurisdictionally within the powers of an Oklahoma County Grand Jury to indict and charge D.A. Prater with Federal crimes.
 - d. The State statutes cited in the Petition, "21 O.S. § 421", "21 O.S. § 455", and "21 O.S. § 551", provide no remedy for the Petition's infirmity and inability to overcome the sovereign immunity and prosecutorial immunity defense or the pre-requisites of the Oklahoma Governmental Tort Claims Act as all actions alleged in the Petition were inherent to the prosecutorial functions of the office of District Attorney for Oklahoma County.

IT IS SO ORDERED THIS 19 DAY OF October 2021.



RICHARD C. OGDEN
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that, on the 19th day of October 2021, I mailed a certified copy with postage thereon fully prepaid, to:

BRIAN TED JONES #22611
528 NW 12TH ST
OKLAHOMA CITY, OK 73103
Counsel for the Applicants


Deputy Court Clerk